

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
 FOR THE COUNTY OF YAVAPAI

2012 FEB 15 AM 8:57 ✓

SANDRA K. HARRAHAM, CLERK

BY: [Signature]

STATE OF ARIZONA, )

Plaintiff, )

vs. )

Case No. V1300CR201080049

JAMES ARTHUR RAY, )

Court of Appeals

Defendant. )

Case No. 1 CA-CR 11-0895

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
 BEFORE THE HONORABLE WARREN R. DARROW

INITIAL APPEARANCE

FEBRUARY 4, 2010

Camp Verde, Arizona

ORIGINAL

REPORTED BY  
 MINA G. HUNT  
 AZ CR NO. 50619  
 CA CSR NO. 8335

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
2 FOR THE COUNTY OF YAVAPAI  
3  
4 STATE OF ARIZONA, )  
5 Plaintiff, )  
6 vs ) Case No V1300CR201080049  
7 JAMES ARTHUR RAY, ) Court of Appeals  
8 Defendant ) Case No 1 CA-CR 11-0895  
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15 BEFORE THE HONORABLE WARREN R DARROW  
16 INITIAL APPEARANCE  
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18 Camp Verde, Arizona  
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24 REPORTED BY  
25 MINA G HUNT  
AZ CR NO 50619  
CA CSR NO 8335

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1 Proceedings had before the Honorable  
2 WARREN R. DARROW, Judge, taken on Thursday,  
3 February 4, 2010, at Yavapai County Superior Court,  
4 Division Pro Tem B, 2840 North Commonwealth Drive,  
5 Camp Verde, Arizona, before Mina G. Hunt, Certified  
6 Reporter within and for the State of Arizona.  
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1 APPEARANCES OF COUNSEL:

2 For the Plaintiff:

3 YAVAPAI COUNTY ATTORNEY'S OFFICE  
4 BY: STEVEN A. YOUNG, ATTORNEY  
5 255 East Gurley Street  
6 Prescott, Arizona 86301  
7

8 For the Defendant:

9 THOMAS K. KELLY, PC  
10 BY: THOMAS K. KELLY, ATTORNEY  
11 425 East Gurley  
12 Prescott, Arizona 86301-0001  
13

14 MUNGER TOLLES & OLSON, LLP  
15 BY: LUIS LI, ATTORNEY  
16 355 South Grand Avenue  
17 Thirty-fifth Floor  
18 Los Angeles, California 90071-1560  
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1 PROCEEDINGS

2 THE COURT: This is cause  
3 No. V1300CR201080049, State of Arizona versus James  
4 Arthur Ray, who is present in custody with his  
5 attorney, Mr. Kelly. Mr. Young represents the  
6 state.  
7

8 This is the time set for the initial  
9 appearance in this matter. There has been a return  
10 of an indictment. But before we get to that, I did  
11 receive and saw this morning dated February 3 a fax  
12 requesting that cameras be permitted in court for  
13 this proceeding. I provided the letter, that  
14 request, to both of the attorneys. And I received  
15 a fax. That was a fax of February 3. I did see it  
16 just this morning.  
17

18 But then on February 4 at 8:50, I got a  
19 motion to preclude media coverage of court  
20 proceedings. It was submitted by Mr. Kelly, joined  
21 by Mr. Young. And under Rule 122, when there are  
22 objections, the Court is to hold a hearing  
23 promptly.  
24

25 So that's what we're going to do right  
now is have a hearing on that issue. I have  
ordered at this time cameras cannot be present. Of  
course, under the new rule, really a presumption

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1 that cameras are permitted, electronic recording is  
2 permitted. But there does have to be a hearing.

3 I'll just say this, Counsel: The  
4 pleading or the motion submitted by Mr. Kelly is  
5 really conclusory, as they say. It just recites  
6 the factors.

7 I want to note this also: The request is  
8 timely. When there is less than three days before  
9 a proceeding, you can't necessarily have the 48  
10 hours that are mandated. But there still has been  
11 very little notice. And that's just the way the  
12 time frame worked out.

13 But do either of the attorneys want to  
14 supplement the motion that opposes the presence of  
15 cameras?

16 MR. KELLY: If I may, Judge, I'd also like the  
17 record to reflect the presence of Luis Li from  
18 Munger, Tolles & Olson.

19 THE COURT: Okay. And I understand that pro  
20 hac vice representation is made, that request.

21 MR. LI: That's correct, Your Honor.

22 MR. KELLY: It has been filed. It is pending.  
23 And I did contact Mr. Young. We discussed this  
24 proposed preclusion of media coverage. And I've  
25 outlined the factors which I believe to be relevant

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1 in this regard.

2 The goal of both parties is to obtain a  
3 fair trial for all interested persons. So we would  
4 ask for preclusion and, of course, under your  
5 discretion in that regard.

6 THE COURT: Mr. Young, is there anything you  
7 wanted to add to that?

8 MR. YOUNG: Judge, the state's interest in  
9 getting a fair and impartial jury, if this case  
10 were to proceed to trial, this is a relatively  
11 small county, or rural county. Posing pictures and  
12 video of Mr. Ray while in custody could damage that  
13 end. So we would ask you to preclude the request.

14 THE COURT: Okay. Obviously any ruling that's  
15 made here applies only to this very brief initial  
16 appearance hearing. The rule does provide --  
17 Subsection D -- that electronic and still  
18 photographic coverage of the appearance or  
19 testimony of a particular witness may be prohibited  
20 if the Judge determines that such coverage would  
21 have a greater adverse impact on the witness or his  
22 or her testimony than nonelectrical or  
23 nonphotographic coverage would have.

24 Then Part C says, the Judge may limit or  
25 prohibit electronic or still photographic coverage

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1 only after making specific on-the-record findings  
2 that there is a likelihood of harm arising from one  
3 or more of the above factors that outweighs the  
4 benefit to the public of camera coverage.

5 In that regard, essentially, what I have  
6 are avowals from both parties that there would be  
7 such harm. Obviously the rule normally  
8 contemplates at least 48 hours to consider more  
9 specifically the actual facts that go behind the  
10 assertions that cameras would be harmful.

11 But I'm finding at this time two factors  
12 apply: Subsection 6 under Part B, the time limits  
13 of the request pursuant to Subsection F of the  
14 rule. As indicated, the request was technically  
15 timely. But in terms of actually considering the  
16 true factors that could impact the fairness of the  
17 proceeding, there has been no opportunity  
18 whatsoever to look into those facts and have an  
19 intelligent, meaningful decision.

20 The other factor is the adequacy of the  
21 physical facilities, the court, for coverage. This  
22 is a relatively new courthouse now. There is  
23 "e-courtrooms." But just from what was happening  
24 this morning, there are logistical issues that  
25 would need to be worked out if in the future

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1 cameras are permitted in this courtroom, if this  
2 happens to be the assigned court or in another  
3 courtroom. There hasn't been time to consider that  
4 and look into those matters as well.

5 As a matter of fact, to hold the hearing  
6 could even interfere with the required timeliness  
7 for this particular proceeding.

8 So I do make the finding, then, pursuant  
9 to Subsection C regarding the likelihood of harm.  
10 And, again, based at this point largely on the  
11 avowal of counsel that's been presented to me and  
12 the lack of time sufficient to conduct an  
13 appropriate and proper hearing.

14 The cameras, then, are not going to be  
15 allowed for this proceeding.

16 Another thing I should note too, that in  
17 later proceedings I anticipate that there will be a  
18 hearing before whoever is actually handling the  
19 matter, whatever judge. And there can be a full,  
20 appropriate or proper hearing at a later time when  
21 the issue can be considered. But that is my ruling  
22 for today.

23 The next matter really has to do with the  
24 initial appearance, which is why the case is set.

25 And, Mr. Kelly, let me ask you, have you

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1 reviewed the basic matters that are covered in an  
2 initial with Mr. Ray?

3 MR. KELLY: I have, Judge. Would you prefer  
4 that we stand at the podium?

5 THE COURT: You can remain at counsel table.  
6 That's fine. I want to ask first. Is Mr. Ray's  
7 name and address correct as indicated on the jail  
8 and court documents?

9 MR. KELLY: It is, Judge.

10 THE COURT: And has Mr. Ray been informed of  
11 the charges? Have you done that, Mr. Kelly?

12 MR. KELLY: I have, Judge. We've got a copy  
13 of the indictment we've reviewed with our client.  
14 We waive its formal reading. His name is spelled  
15 correctly.

16 We'd enter a plea of not guilty, request  
17 that a jury trial be preserved and a case  
18 management conference be set.

19 THE COURT: Okay. That's, essentially, what  
20 would be done at an arraignment. This isn't the  
21 arraignment. It's an initial appearance. And what  
22 I've indicated, I indicated I'm going to set -- as  
23 I indicated to counsel briefly, I intend to set the  
24 matter into EDC, early disposition court. However,  
25 I think that if the parties want to waive that,

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1 that by an agreement that can be considered an  
2 arraignment proceeding rather than an EDC  
3 proceeding. And there probably could be a waiver  
4 of that later hearing.

5 In any event, I'll note that Mr. Kelly --  
6 I'm going to say I'm not conducting the arraignment  
7 today. This is strictly the initial appearance,  
8 basically, the proceeding that's required within 24  
9 hours of arrest.

10 The charges in the indictment are three  
11 counts of manslaughter, not alleged to be  
12 dangerous, Class 2 felonies.

13 You have received a copy of that, you've  
14 indicated. I'll also note that there are requests  
15 about the indictment not being released or  
16 documentation. I don't know of any reason why that  
17 would be the case at this point because it's now  
18 been served obviously.

19 I find probable cause exists from the  
20 grand jury determination.

21 And I'd ask the parties if you wish to  
22 address release conditions at this time. I know I  
23 have a motion that's been submitted to the Court.  
24 It's titled "Notice of Motion for Reduced Bail,  
25 Memorandum of Point and Authorities." This is a

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1 request for reduced bail. I've read of some of it.

2 The motion itself is not particularly lengthy.

3 There is a lot of supporting documentation.

4 Anything else with regard to release  
5 request at this time?

6 MR. KELLY: Judge, what I would like to  
7 discuss -- first of all, I appreciate the informal  
8 conversation we had in this regard and would  
9 emphasize that these are probation available  
10 offenses. My client has no criminal history  
11 whatsoever. He surrendered into the custody of the  
12 Yavapai County Sheriffs at my office yesterday  
13 afternoon.

14 I believe, Judge, that the bail of  
15 \$5 million is unconscionable given those facts  
16 alone. We have had the opportunity to discuss  
17 extensively with Yavapai County Attorney's Office a  
18 proposed stipulation to a reduced sum. The county  
19 attorney is not prepared to do that today. It's  
20 Mr. Hughes we met with this morning.

21 Given those facts, Judge, what I would  
22 ask is an expedited hearing on the issue of the  
23 appropriate amount of the bond. And I would  
24 suggest if possible and with the agreement of the  
25 state -- I understand the response and reply

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1 deadlines under Arizona law. But if we could  
2 conduct such a hearing perhaps a week from Friday,  
3 if your calendar permits and if Mr. Young were  
4 inclined to agree, that would be our request.

5 THE COURT: Mr. Young, your comments.

6 MR. YOUNG: Judge, I don't have any objection  
7 to that request for a setting.

8 THE COURT: Then what I'm going to do at this  
9 time is confirm the existing conditions of release,  
10 which do carry bail at \$5 million, which may be  
11 satisfied through cash or secured bond.

12 I will set a hearing. The way I'm going  
13 to do that, Counsel, is this: I'll be setting the  
14 EDC hearing, which is the next hearing, which, as  
15 I've indicated, I think a waiver of arraignment --  
16 if that procedure is followed, then perhaps that  
17 hearing would not be necessary -- that EDC hearing.

18 Then if the release hearing is going to  
19 be conducted in this court, my JA will get with  
20 both attorneys, both sides, and then set a time,  
21 then, on Friday if at all possible. I know there  
22 is a jury trial that is scheduled in process at  
23 that time.

24 So it is ordered at this time that the  
25 next court date is an early disposition court

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1 hearing. That will be next Thursday, February 11.  
 2 And that is at 8:00 a.m. if Mr. Ray is in custody,  
 3 1:00 p.m. if not in custody.

4 I do have an order containing the general  
 5 release conditions, also the next setting for  
 6 February 11 at 8:00 or 1:00. I'm also ordering  
 7 that Mr. Ray obey all orders of the Court, not  
 8 commit any crimes, notify the Court immediately if  
 9 there is an address change, not leave the state of  
 10 Arizona without the permission of the Court, not  
 11 have any contact with the alleged victims in any  
 12 manner.

13 You must remain in contact with your  
 14 attorney. You must do that. And I have already  
 15 confirmed the bond previously set.

16 Mr. Kelly, I'm going to have this order  
 17 handed to you by the bailiff. Have that signed.

18 At this time, though, Mr. Young, did you  
 19 have any other -- anything further in the  
 20 proceeding with regard to release conditions or any  
 21 other matter?

22 MR. YOUNG: Judge, if could you include the  
 23 name of the decedent victims -- James Shore, Liz  
 24 Neuman and Kirby Brown -- in the no-contact  
 25 provision with their families, please.

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1 THE COURT: Okay. It's ordered that the -- I  
 2 want to hear from the defense on that.

3 Mr. Kelly.

4 MR. KELLY: No objection.

5 THE COURT: Okay. Then it is ordered that  
 6 those names will be the specific persons to which  
 7 the order applies. No contact.

8 Mr. Kelly.

9 MR. KELLY: May I have a brief moment, Judge?

10 THE COURT: Yes.

11 MR. KELLY: During our discussions with  
 12 Mr. Hughes from the county attorney's office, as it  
 13 relates to the reasonableness of the bond, we were  
 14 going to provide some private financial information  
 15 on behalf of our client. And I believe with  
 16 agreement from the county attorney's office, we'd  
 17 ask for a protective order that that private,  
 18 confidential, financial information that has  
 19 nothing to do with the merits of the case but may  
 20 relate to the county attorney's opinion as to the  
 21 reasonableness of the bond be protected from  
 22 disclosure to any third party.

23 THE COURT: Mr. Young?

24 MR. YOUNG: No objection.

25 THE COURT: Okay. That will be ordered at

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1 this time.

2 MR. KELLY: Thank you. That's all I have,  
 3 Judge.

4 THE COURT: The hearing is going to take place  
 5 a week from Friday. I would like to accelerate  
 6 briefing schedule, Mr. Young, for any written  
 7 response.

8 When would you have that?

9 MR. YOUNG: Could we have till Wednesday, Your  
 10 Honor?

11 MR. KELLY: Judge --

12 THE COURT: If you want to reply, I want you  
 13 to have enough time to do that as well. But  
 14 that -- I think that would be a reasonable amount  
 15 of time.

16 MR. KELLY: I agree, Judge. We need a day to  
 17 reply.

18 THE COURT: Okay. So that will be the time,  
 19 then, for a response.

20 Anything further, Counsel?

21 MR. KELLY: No, sir.

22 THE COURT: Mr. Kelly, please make sure when  
 23 you get the signature --

24 Also, Mr. Young. If you wanted to amend  
 25 or just put the specific names. If there is any

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1 question about the names, they can be written in at  
 2 this time as well if you want to do that.

3 MR. YOUNG: Yes. Please.

4 MR. KELLY: I also have my notice of  
 5 appearance.

6 THE COURT: Mr. Kelly and Mr. Ray, you've seen  
 7 the order now with the names inserted?

8 MR. KELLY: We have.

9 THE COURT: Okay. Thank you.

10 We will adjourn.

11 (The proceedings concluded.)

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1 STATE OF ARIZONA )  
2 ) ss REPORTER'S CERTIFICATE  
3 COUNTY OF YAVAPAI )

4 I, Mina G Hunt, do hereby certify that I  
5 am a Certified Reporter within the State of Arizona  
6 and Certified Shorthand Reporter in California

7 I further certify that these proceedings  
8 were taken in shorthand by me at the time and place  
9 herein set forth, and were thereafter reduced to  
10 typewritten form, and that the foregoing  
11 constitutes a true and correct transcript

12 I further certify that I am not related  
13 to, employed by, nor of counsel for any of the  
14 parties or attorneys herein, nor otherwise  
15 interested in the result of the within action

16 In witness whereof, I have affixed my  
17 signature this 13th day of February, 2012

18

19

20

21

22

23 -----  
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25 CA CSR No 8335

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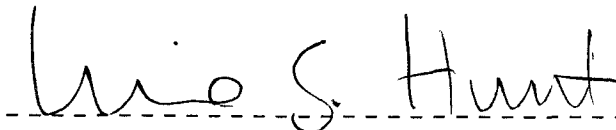
1 STATE OF ARIZONA )  
2 ) ss: REPORTER'S CERTIFICATE  
3 COUNTY OF YAVAPAI )  
4

5 I, Mina G. Hunt, do hereby certify that I  
6 am a Certified Reporter within the State of Arizona  
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13 I further certify that I am not related  
14 to, employed by, nor of counsel for any of the  
15 parties or attorneys herein, nor otherwise  
16 interested in the result of the within action.

17 In witness whereof, I have affixed my  
18 signature this 13th day of February, 2012.  
19  
20  
21

22   
23 -----

24 MINA G. HUNT, AZ CR No. 50619  
25 CA CSR No. 8335